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Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

IN THE MATTER OF: :  
Phase II Distribution :Docket No.  
of the 2004-2009 :2012-6  
Cable Royalty Funds :CRB CD  
:2004-09  
:(Phase II)  
IN THE MATTER OF: :  
Phase II Distribution :Docket No.  
of the 1999-2009 :2012-7  
Satellite Royalty Funds :CRB SD  
:1999-2009  
:(Phase II)

Volume 3

Wednesday,  
December 10, 2014

Room 1M-403  
Madison Building  
Library of Congress  
101 Independence Avenue, SE  
Washington, DC

The above-entitled matter came on for  
hearing, pursuant to notice, at 9:15 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT  
THE HONORABLE JESSE FEDER  
THE HONORABLE DAVID R. STRICKLER  
Copyright Royalty Judges

WITNESSE	DIRECT	CROSS	REDIRECT	RECROSS
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1 previously?

2 MR. BOYDSTON: Perhaps. And maybe I  
3 would have let 338 come in if I wanted to see  
4 certain information in 338. But at the time 338  
5 came out, I was asking a question of Ms.  
6 Saunders, and I wanted to continue asking my  
7 question, and she hadn't provided that  
8 information at that time.

9 JUDGE STRICKLER: And you're offering  
10 this into evidence now based on what foundation,  
11 Mr. Olaniran?

12 MR. OLANIRAN: Off the basis that we  
13 produced it to them in discovery.

14 JUDGE BARRETT: In hard copy?

15 MR. OLANIRAN: In hard copy, yes. And  
16 Your Honor, I wish I had the transcript of Ms.  
17 Saunders's testimony, so I am at a disadvantage.  
18 What we've heard is Mr. Boydston's version of  
19 what Ms. Saunders testified to, and --

20 JUDGE BARRETT: And you would  
21 controvert that by saying what?

22 MR. OLANIRAN: By saying that is not

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1 Ms. Saunders's testimony.

2 JUDGE BARRETT: Can you paraphrase  
3 what you think Ms. Saunders's testimony is?

4 MR. OLANIRAN: I said earlier to Ms.  
5 Saunders that she had a stack of paper, and what  
6 I suspect this is -- what I am almost certain  
7 this is, actually, I asked Ms. Saunders again,  
8 are the copies of the stacks of paper that Ms.  
9 Kessler used to compile the certifications.

10 JUDGE BARRETT: Okay -- yeah. We  
11 still have the issue of Mr. Whitt's hard drive  
12 being -- when he retired, he turned over his hard  
13 drive except for the one he later discovered in  
14 his basement, which we've learned in a companion  
15 proceeding. Did he turn that over to MPAA? Did  
16 he turn that over to your firm? Does anybody  
17 know what he did with his hard drive when he  
18 retired?

19 MR. OLANIRAN: I don't recall Ms.  
20 Saunders's testimony on that particular --  
21 exactly what the --

22 JUDGE BARRETT: MPAA got it, that's

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1 what I recall, not that counsel got it. But as  
2 that as it may.

3 MR. OLANIRAN: It was something along  
4 those lines, and I forget what she said about the  
5 availability of it, something like that.

6 JUDGE STRICKLER: The issue at hand is  
7 whether or not to admit 341.

8 MR. OLANIRAN: Correct.

9 JUDGE STRICKLER: And the question --  
10 there is an objection based on a lack of  
11 foundation, you didn't have sufficient documents  
12 that were used to create 341, correct, Mr.  
13 Boydston?

14 MR. BOYDSTON: Correct.

15 JUDGE STRICKLER: And the witness who  
16 can provide that foundation is sitting right  
17 here, Ms. Saunders, in the courtroom, right now.

18 MR. BOYDSTON: Right.

19 JUDGE BARRETT: Okay. So we'd like to  
20 hear from Ms. Saunders to figure out --

21 MS. SAUNDERS: Oh thank heavens,  
22 because this is killing me.

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1 (Laughter.)

2 JUDGE BARRETT: Ms. Saunders, you  
3 remain under oath.

4 MS. SAUNDERS: Yes, absolutely.

5 JUDGE BARRETT: And you must not swear  
6 any.

7 MS. SAUNDERS: Unless thank heavens  
8 counts as a swear, I will try. Who is  
9 questioning me?

10 JUDGE BARRETT: Mr. Olaniran is --

11 MS. SAUNDERS: Okay.

12 JUDGE BARRETT: But Mr. Boydston may  
13 voir dire --

14 MS. SAUNDERS: Absolutely.

15 JUDGE BARRETT: -- depending on where  
16 we go with this. Mr. Olaniran?

17 DIRECT EXAMINATION

18 BY MR. OLANIRAN:

19 Q Ms. Saunders, are you looking at  
20 Exhibit 341?

21 A Yes, I am.

22 Q And what is that exhibit?



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1 A It is a certification for -- actually,  
2 it is a series of certifications executed by a  
3 Pintage, by an officer or the managing director  
4 of Pintage, in respect of claims made for various  
5 satellite and cable retransmission royalties over  
6 the period of 2001, 2002 -- hold on, it's going  
7 to take me a while -- I am guessing up through,  
8 let's see, 2004, 2007, I am going to guess it's  
9 through -- unless you want me to go through every  
10 single one, which is going to take me a minute  
11 because unhelpfully, there's no colored paper  
12 between these.

13 Q Okay. That's --

14 A It goes up through -- it says 2004 to  
15 2009, so --

16 Q Okay, and it's not just one, there's  
17 multiple entities on whose behalf Pintage  
18 executed the --

19 A Yes, yes, that is correct, yes, that  
20 is correct.

21 Q And how was the document created?

22 A I am sorry?

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1 Q How was the document created?

2 A Created?

3 Q Yes.

4 A So as I testified previously, Mr.  
5 Whitt gave, produced to Ms. Kessler hard copies  
6 of the list of titles which -- and the claimants  
7 associated with those titles, to which Mr.  
8 Kessler would append, or appended, a cover  
9 Certification of Entitlement form for the  
10 claimant to execute confirming that the capacity  
11 in which they make the claim, that they filed a  
12 valid claim for the royalties, and confirming  
13 through either -- through notations on the titles  
14 list in each year which titles they want to -- or  
15 they could claim cable retransmission or  
16 satellite retransmission royalties.

17 I think I got the grammar all messed  
18 up there. But the years for which and the titles  
19 which they could claim in each of the royalty  
20 years.

21 Q You have other certifications in the  
22 record, don't you?

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1 A Yes, yes we do. I think we have a  
2 few. I think we have certifications for many of  
3 the claimants that IPG has challenged.

4 Q Would you look at 337, the exhibit  
5 pre-marked as 337?

6 A Yes, yes. This is a certification  
7 signed by Allied Communications by C.R. McKay, as  
8 a Regional CEO for Allied Communications. And do  
9 you need me to tell you for what years? It  
10 appears to be satellite royalties in 2005 with a  
11 list of titles appended.

12 Q Also, would you look at Exhibit 339  
13 please?

14 A Yes. Also a certification, executed  
15 on behalf of CBS Broadcasting on behalf of King  
16 World Productions, signed by the Vice President  
17 and Assistant Secretary Martin Messenger --

18 Q Okay --

19 A -- for, sorry, for satellite royalties  
20 in calendar year 2000, with a fairly lengthy  
21 title list. Oh, sorry, with a title list, and  
22 then a satellite retransmission royalties

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1 certification for calendar year 2000. Both are  
2 certified to as officer or partner of the entity  
3 identified as the owner or authorized agent.

4 MR. BOYDSTON: Your Honor, this is  
5 covering old ground.

6 JUDGE BARRETT: May I just jump in  
7 here and say something to cut to the chase. Mr.  
8 Whitt created these papers, gave them to Ms.  
9 Kessler. Ms. Kessler ran with the ball.

10 THE WITNESS: Yes.

11 JUDGE BARRETT: When Mr. Whitt  
12 retired, he took the hard drive out of his  
13 computer. Do you have any knowledge what he did  
14 with it at that point?

15 THE WITNESS: I do.

16 JUDGE BARRETT: And what is that?

17 THE WITNESS: He gave the hard drive  
18 to MPAA, and I gave that hard drive to counsel.  
19 I think this is the part of my testimony where I  
20 said I was not the cyber-judge. I took the hard  
21 drive and I gave it to my counsel, and I  
22 instructed my counsel to extract from it whatever

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1 they could.  
2 I specifically did not say that Mr.  
3 Whitt had a database. I think I specifically  
4 said that I did not know how Mr. Whitt conducted  
5 his operations or how he compiled his data. I  
6 did say that Mr. Whitt did rely on broadcast data  
7 that was acquired in order to generate those  
8 lists. That was the extent, I believe, of how I  
9 characterized Mr. Whitt's operation.

10 JUDGE BARRETT: Mr. Olaniran, could  
11 you make a representation as an officer of the  
12 court that your office made an effort to extract  
13 data from Mr. Whitt's hard drive?

14 MR. OLANIRAN: Yes we did, Your Honor.

15 JUDGE BARRETT: Okay. And what did  
16 you do with the data you were able -- if you were  
17 able to extract any, what did you do with it, or  
18 how did you configure it, and where is that base  
19 of knowledge at this point?

20 MR. OLANIRAN: I am not the  
21 cyber-lawyer. If Ms. Plovnick --

22 JUDGE BARRETT: Ms. Plovnick --

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1 MR. OLANIRAN: Yes.

2 MS. PLOVNIK: We examined the hard  
3 drive, and we found various -- you know, we went  
4 through the hard drive, and we extracted what we  
5 could, and we used as much of it as we could to  
6 form the Excel spreadsheet that we produced.

7 We tried to be as -- you know, to cull  
8 what we could to do that. And so that is the  
9 electronic record that we were able to create  
10 based on what was not in a database form.

11 JUDGE STRICKLER: What form was it in?

12 MS. PLOVNIK: It was multiple, all  
13 over the place, very not very well-maintained  
14 condition files, I assess that this way. I am  
15 also not a cyber person, but it was a collection  
16 of bits --

17 JUDGE BARRETT: Are you making a  
18 representation that your law firm extracted  
19 everything that was extractable from the hard  
20 drive and incorporated everything into the  
21 spreadsheet that you created in response to the  
22 Judges' discovery order?

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1 MS. PLOVNIK: Yes, Your Honor.

2 MR. OLANIRAN: I would also add -- and  
3 Mr. Whitt has some damage to some of the drives,  
4 and I think that issue in fact came up. In one  
5 of the proceedings, I think perhaps they were  
6 describing a 99 percent damage --

7 MS. PLOVNIK: I think that was the  
8 one in his basement.

9 MR. BOYDSTON: Your Honor, I think it  
10 ought to be taken into consideration that Mr.  
11 Olaniran has said he is not the cyber-lawyer, so  
12 now all of a sudden he knows what the damage is.  
13 I don't know how that came up.

14 JUDGE BARRETT: Well we were just here  
15 15 minutes ago in the 1999 proceeding, and we had  
16 extensive testimony from Mr. Whitt. And I don't  
17 think we need to repeat that here, but to the  
18 extent we need to know what Mr. Whitt's processes  
19 and history are or were, we can incorporate the  
20 transcript of the 1999 hearings -- we all know  
21 Mr. Whitt had a company, he did his data  
22 manipulation, he retired, he turned over what he

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1 could, he found one in his basement on the eve of  
2 our determination in the '99 proceeding, you  
3 know, we are familiar with that, okay?

4 So all I need to establish today, or  
5 all we need to establish, is whether there is any  
6 data anywhere in any form, I mean useable form,  
7 that is not included in the spreadsheet that  
8 MPAA's counsel produced in response to the  
9 Judges' July order. And I understand you -- I  
10 will let you answer that, is there, to your  
11 knowledge?

12 MS. PLOVNIK: Not to my knowledge.

13 JUDGE BARRETT: Okay.

14 MR. OLANIRAN: I am very confident,  
15 Your Honor, that there isn't.

16 JUDGE BARRETT: Okay.

17 MR. OLANIRAN: And if I could add one  
18 final point, I know -- and this is why it was  
19 absolutely critical that for Appendices A and B  
20 for Ms. Saunders's testimony, you could not rely  
21 on anything else but the list of claimants  
22 supported by the representation record and the



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1 list of titles supported by the certification.  
 2 JUDGE STRICKLER: As opposed to the  
 3 Excel spreadsheet.  
 4 MR. OLANIRAN: As opposed -- well.  
 5 JUDGE STRICKLER: Among other things,  
 6 as opposed to the Excel spreadsheet --  
 7 MR. OLANIRAN: Again, if you read our  
 8 briefs, we were trying to explain as much as we  
 9 can. This is exactly the problem that we were  
 10 trying to articulate in our briefs because our  
 11 interpretation of the discovery rule is to  
 12 provide documents that underlie the testimony.  
 13 The document that underlies Ms. Saunders's  
 14 testimony with regard to the titles that were  
 15 claimed are the certifications which we provided,  
 16 and also, the list appended to her testimony  
 17 which was digitized, I believe, in searchable  
 18 form, for IPG to use.  
 19 JUDGE BARRETT: Mr. MacLean, you were  
 20 on your feet.  
 21 MR. MACLEAN: Oh. Your Honor, I  
 22 decided not to interrupt. However, since you

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1 have called on me, Your Honor -- and I am  
 2 actually a little bit embarrassed to raise this  
 3 because I know how it might sound -- however, Mr.  
 4 Galaz is at this very moment a witness on the  
 5 stand even though he is not sitting in the  
 6 witness chair right now.  
 7 Ms. Saunders is testifying only as to,  
 8 as I understand, the foundation with respect to a  
 9 document that was offered in Mr. Galaz's  
 10 testimony. I would request the Judges to  
 11 admonish and direct Mr. Galaz not to pass notes  
 12 and whisper with his counsel, particularly  
 13 regarding his testimony while he is a witness on  
 14 the stand.  
 15 MR. BOYDSTON: Your Honor, there has  
 16 been no communication between us about his  
 17 testimony. There has been communication with us  
 18 about her testimony, and I think that's  
 19 permissible.  
 20 JUDGE BARRETT: Thank you, it is.  
 21 Thank you, Mr. MacLean.  
 22 Mr. Boydston, do you want to ask any

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1 questions of Ms. Saunders before your client gets  
 2 back on the stand?  
 3 MR. BOYDSTON: I would. Can I just do  
 4 it from here?  
 5 JUDGE BARRETT: As long as the court  
 6 reporter can hear you.  
 7 MR. BOYDSTON: Okay.  
 8 CROSS EXAMINATION  
 9 BY MR. BOYDSTON:  
 10 Q Now Ms. Saunders, and correct me if  
 11 I'm wrong, I am only going off memory, I don't  
 12 have a transcript, but my recollection was that  
 13 this all came up originally in the context of me  
 14 asking you about Appendix A and B to your  
 15 declaration, one of which listed programs and one  
 16 of which listed program owners. Do you --  
 17 A Claimants, claimants.  
 18 Q -- recall -- thank you, claimants.  
 19 Thank you, claimants, yes. Do you recall that --  
 20 ?  
 21 Q I do.  
 22 A And my question was initially

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1 something along the lines of, you know, how did  
 2 you connect the two? From this big list of  
 3 programs, how do you connect which programs are  
 4 owned by which claimant? And you said that Mr.  
 5 Whitt did that, the third-party vendor. Is that  
 6 correct?  
 7 A That's correct.  
 8 Q And I said, okay. And do you know how  
 9 he did it? And you said something to the effect  
 10 of I don't know, but he took those things and he  
 11 used some sort of computer programs or something  
 12 like that to do it and came up with lists and  
 13 then returned them to us in a paper format, at  
 14 which point Marsha Kessler and then her successor  
 15 put them together with certifications. Is that  
 16 accurate?  
 17 A I don't know if the actual words you  
 18 just used are accurate, but the concept is  
 19 absolutely spot-on. I do not know what was in  
 20 Mr. Whitt's machines, his processes. I do not  
 21 know if he created a database. I do not know how  
 22 he used the information that came to him. All I

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1 know is what the MPAA got and distributed to his  
2 claimants, or I should say, I know that Ms.  
3 Kessler distributed it to her claimants.

4 Q What were -- where did the appendices  
5 come from?

6 A The appendices were -- they were  
7 generated, as I understand it, by Mr. Whitt in  
8 respect of each claimant.

9 Q Okay. Just to make clear, when I say  
10 appendices, I mean the Appendix A and Appendix B  
11 --

12 A Oh, I am so sorry. The list of our  
13 claimants and of our titles?

14 Q Yes, right.

15 A I -- those lists were prepared by  
16 counsel in response to, or based on the  
17 certification reports that were returned to MPAA  
18 by our claimants.

19 Q So they would get the certification  
20 reports in and they'd just make a big list?

21 A Yes, exactly. It was really arduous.

22 Q Then you testified -- I asked you, I

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1 think, you know whatever -- actually, I don't  
2 remember --

3 A And I should also add it was really  
4 expensive.

5 Q I bet it was. You then -- my  
6 recollection is that you then testified that when  
7 Mr. Whitt retired, he turned over his hard drive  
8 to you, and then you turned it over to your  
9 counsel, correct?

10 A He turned it over, actually, to then,  
11 our then-Director for Retransmission Royalty,  
12 Sandra Pope, who at my instruction turned it over  
13 -- actually, I believe that my instruction was  
14 that my lawyers send a courier and collect from  
15 Ms. Pope's office literally every scrap of every  
16 thing that she could find or lay her hands on  
17 that pertained to these proceedings and these  
18 royalty years, including Mr. Whitt's hard drive.

19 Q The Appendix A and B to your  
20 declaration, you remember my talking about the  
21 programs --

22 A The lists and the claimants and the

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1 parties, yes?

2 Q Did you communicate with counsel as to  
3 how those were created, or do you know how those  
4 were created by counsel? Did they type up the  
5 1,000 pages, or do you know?

6 A I don't know.

7 Q Now given that the certifications and  
8 the program lists attached to the certifications  
9 were created by Mr. Whitt, to your knowledge,  
10 from the -- and using his devices, whatever they  
11 were, and given that the chart that was given to  
12 IFG pursuant to the order by the court was  
13 created by the same source, according to your  
14 counsel, wouldn't you expect that they would line  
15 up?

16 A No. I believe, and I had lengthy  
17 conversations with my lawyers during which I  
18 almost tore my hair out because this process took  
19 forever and cost thousands and thousands of  
20 dollars --

21 Q And which one was this extraction?

22 A Extracting the lists of claimants and

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1 owners by royalty year to cover all the years at  
2 issue in this proceeding, and it was beyond  
3 frustrating that we didn't have a single, to use  
4 your word, database that we could draw from  
5 because that would have made all of our lives so  
6 much easier.

7 Q The extraction you are talking about  
8 is what extraction, the extraction from Mr.  
9 Whitt's hard drive?

10 A No. I am talking about the melding  
11 together or the retrieval of data from all the  
12 sources at our disposal, which were Mr. Whitt's  
13 hard drive, the paper records individually by  
14 royalty year, and the process of making a  
15 compendium that went claimant by year for all the  
16 years and all the claimants that are at issue in  
17 this proceeding.

18 Q And when did this process that you're  
19 describing right now take place? I am a little  
20 confused.

21 A Well I actually don't recall. I  
22 remember many conversations that I had from my



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1 home office, walking around in frustration in my  
2 living room. This fall, this fall -- this fall,  
3 starting back in the spring, I don't, I am sorry,  
4 I do not recall.

5 Q Do you recall if that was the effort  
6 that was made in response to the Judges' order to  
7 come up with --

8 A Oh no, I --

9 MR. OLANIRAN: Objection, Your Honor.  
10 We are now wading into way outside the scope.

11 MR. BOYDSTON: Well I am just -- she  
12 was explaining when this took place, and I was  
13 just trying to identify --

14 THE WITNESS: No no, that conversation  
15 I remember very, very clearly. That was a phone  
16 call I got telling me that we had to produce an  
17 electronic record, and I was embarrassed because  
18 I believe the order actually said something to  
19 the effect that MPAA is such a sophisticated  
20 organization, we don't believe that they don't  
21 have an electronic database, by which I was quite  
22 chagrined.

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1 (Laughter.)

2 JUDGE STRICKLER: I just want to ask  
3 you a quick question so I can understand this.  
4 Appendix A and Appendix B deal with  
5 certification, okay?

6 THE WITNESS: Yes.

7 JUDGE STRICKLER: Were those based at  
8 all on anything on Mr. Whitt's hard drive? Yes  
9 or no? I am not interested in your living room.  
10 Yes or no?

11 THE WITNESS: I -- well, I did not  
12 know that until Ms. Plovnick just said that they  
13 used data from Mr. Whitt's hard drive.

14 MS. PLOVNIK: No, just to clarify.  
15 Appendix A and B are from the certification, and  
16 you know, what she was talking about with the  
17 Excel file was something --

18 JUDGE STRICKLER: Okay, okay, you know  
19 what, I want to understand this. Exhibits A and  
20 B came from what?

21 MS. PLOVNIK: The certifications.

22 THE WITNESS: Yes.

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1 JUDGE STRICKLER: And not from the  
2 hard drive?

3 MS. PLOVNIK: Not from the hard  
4 drive.

5 JUDGE STRICKLER: And the hard drive  
6 was used to create the information that was  
7 required pursuant to our order?

8 MS. PLOVNIK: Yes, Your Honor.

9 JUDGE STRICKLER: Those are two  
10 distinct things.

11 JUDGE BARRETT: And perhaps some of  
12 the information that is attached to the  
13 certifications, but we are taking that on faith.

14 MS. PLOVNIK: Mr. Whitt did those.

15 JUDGE BARRETT: Yes.

16 MS. PLOVNIK: Yes.

17 JUDGE BARRETT: And it's his hard  
18 drive.

19 JUDGE STRICKLER: Because Mr. Whitt's  
20 hard drive information is derived, at least in  
21 part, from the same -- from that paper, those  
22 papers that Ms. Kessler had been --

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1 MS. PLOVNIK: He made the paper that  
2 went to Ms. Kessler.

3 MR. OLANIRAN: And just a point of  
4 clarification, Mr. Whitt -- the sheets that  
5 support the certifications were delivered to MPAA  
6 long before this proceeding --

7 MS. PLOVNIK: Days before.

8 MR. OLANIRAN: -- when Mr. Whitt was  
9 still running his operation and he had complete  
10 control of his operation.

11 MS. PLOVNIK: Very archaic, days of  
12 old --

13 MR. OLANIRAN: Now the databases were  
14 produced, we went scrambling for them to comply  
15 with the Judges' order.

16 JUDGE STRICKLER: So if someone wanted  
17 to try to impeach Ms. Saunders's Appendix A and  
18 Appendix B by looking at the underlying material,  
19 it's your position, then, that they should not be  
20 looking at the hard -- any information on that  
21 Excel spreadsheet, but they should be looking at  
22 the underlying documentation itself?

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1 MR. OLANIRAN: I am so glad you put it  
2 that way because that's exactly the point that I  
3 was making earlier, and this is what I meant by  
4 it would be a completely meaningless exercise to  
5 tabulate or to organize in some form this  
6 information on this Excel spreadsheet because it  
7 was not the basis for Appendices A and B in Ms.  
8 Saunders's accounting.

9 JUDGE STRICKLER: So I understand  
10 that, and I thank you, I think I understand your  
11 position. But it's IPG's position that they are  
12 in a position to if not impeach the value of  
13 those appendices, to question them because there  
14 are other documents that were within the care,  
15 custody, and control of MPAA or its agents  
16 including Mr. Whitt and whenever he gave his hard  
17 drive information, and to compare that  
18 information with the claims that are being made  
19 and representing that these copyrights really  
20 weren't owned by or had an agency with those who  
21 are represented on Appendices A and B.

22 You might say pay no attention to that

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1 document behind the curtain, but they want us to  
2 pay every bit of attention to it, and then we  
3 have to decide whether that's a good impeachment  
4 or not.

5 MR. OLANIRAN: That's a fair point,  
6 but Mr. Whitt was not deciding who owns the  
7 copyright or not.

8 JUDGE STRICKLER: But you gave them  
9 the documents, Mr. Whitt's information, and he is  
10 now saying I am comparing that information to  
11 what I see in your representations, and I see a  
12 difference. And you're saying that difference  
13 doesn't matter because that Mr. Whitt's  
14 information is of no relevance.

15 MR. OLANIRAN: Well this is Mr.  
16 Whitt's information long after he stopped running  
17 his operation. Anything could have gone on with  
18 those databases. What is most relevant is the  
19 information that Mr. Whitt delivered to MPAA when  
20 Mr. Whitt was running his shop and Mr. Whitt was  
21 in constant communication with Ms. Kessler and  
22 they were trying to figure out a way to support

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1 the -- to provide a list for the claimants to  
2 sign up on to actually certify.

3 And that's what made it into the --  
4 whatever may be in Mr. Whitt's database that was  
5 provided this June when we were scrambling around  
6 trying to figure out a way to comply with the  
7 order --

8 JUDGE STRICKLER: Well you had to  
9 figure out a way to comply with the order, and I  
10 suppose one of the things you could have done --  
11 I am not saying you did, or -- but you could have  
12 said we can't comply, there is no such material  
13 that exists. Instead you said --

14 MR. OLANIRAN: We said --

15 JUDGE STRICKLER: But let me finish.  
16 And then you complied by saying here is  
17 information that we have that complies with the  
18 order and provides the necessary information  
19 about the copyrights and the agents and the  
20 owners, and now in some sense you are saying  
21 well, yeah, we did that for you, but pay no  
22 attention to what we did because we had to give

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1 you something, so we gave you a bunch of junk.

2 MR. OLANIRAN: Your Honor, it was  
3 quite a frustrating experience trying to figure  
4 out what to do, and I don't deny that that is --  
5 that would have been one option. And we did the  
6 best we could under the circumstances, knowing  
7 that -- and now, and another way to look at this,  
8 had we done what you said and they go in the  
9 database and they see the discrepancies between  
10 what we produced and -- between the hard copy of  
11 the certifications and what's in that database,  
12 then we may have come here arguing about the  
13 discrepancies.

14 And I don't -- I think that that's a  
15 fair point, but then we get arguing about well  
16 why are there discrepancies? And we would still  
17 be going back to look at the certifications.  
18 That's what the claimants are claiming.

19 JUDGE STRICKLER: Okay. But you  
20 produced that. It is in response to our order,  
21 but it's in response to our order compelling for  
22 the discovery, so it constitutes discovery.



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1 And so you can point out that your own  
2 discovery that you produced has holes in it,  
3 deficiencies in it, and you can make that  
4 argument, and you are making that argument --

5 MR. OLANIRAN: We actually stated that  
6 in the cover letter that went to IFG. And if you  
7 look at 333, that's exactly why we make that  
8 point because we know, as lawyers, we don't  
9 produce discovery, and most of the work we claim  
10 work product privilege on, and we had to find --

11 JUDGE STRICKLER: I am sorry to  
12 interrupt you, but that raises an interesting  
13 question, and I was concerned when Ms. Saunders  
14 said that. She said that she dumped it all on  
15 you and it was very expensive, I think that's  
16 when you started talking about pulling your hair  
17 out in the living room.

18 And there's no reason why that had to  
19 be done. That could have been done in-house. It  
20 could have been done with an outside contractor.  
21 But it was given to you.

22 THE WITNESS: You're mistaken. I am

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1 so sorry, that could not have been done in-house.

2 JUDGE STRICKLER: Yeah, the choice to  
3 take evidence of whatever quality and have the  
4 attorneys compile the information is a choice  
5 that the client makes. It is still the client's  
6 discovery. And the adversarial party is free to  
7 do with it as it may, and you are free to explain  
8 why it may be bad information, but it was still  
9 discoverable pursuant to our order. And let the  
10 chips fall where they may.

11 JUDGE BARRETT: It's water way --  
12 excuse me, it's water way over the dam right now  
13 whether we required it or not. The fact that we  
14 were incredulous in 2014 that the company didn't  
15 have electronic data for this time period did not  
16 require MPAA to create it, but MPAA in its own  
17 interest as much as in OURS, I think, and in the  
18 interest of these proceedings, did the best it  
19 could, okay?

20 Now, the fact that MPAA created a  
21 spreadsheet and the fact that MPAA's witness  
22 supplied data that didn't necessarily correlate

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1 to the spreadsheet, those are -- you know, those  
2 are issues that never the twain shall meet.  
3 There's a spreadsheet out there that combines  
4 everything they could put their hands on, and  
5 there are appendices to this witness's written  
6 testimony based on paper.

7 MR. BOYDSTON: Can I just have ten  
8 seconds?

9 JUDGE BARRETT: Am I correct? Yes.  
10 And then we are going to leave because I have an  
11 appointment.

12 MR. BOYDSTON: Well I guess I can't  
13 have ten seconds.

14 JUDGE BARRETT: No, you may, Mr.  
15 Boydston.

16 MR. BOYDSTON: Why didn't they give us  
17 a copy of Whitt's hard drive? Why didn't they do  
18 that? Why did they invent this other thing when  
19 what we were asking for was exactly that?

20 JUDGE BARRETT: You know, I think --  
21 well, I don't know, Mr. Boydston --

22 MR. BOYDSTON: Judge Strickler was

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1 about to ask counsel.

2 JUDGE STRICKLER: No, I believe that  
3 counsel responded --

4 JUDGE BARRETT: The hard drive was on  
5 a late twentieth century gadget.

6 MR. BOYDSTON: So?

7 JUDGE BARRETT: You know, I don't know  
8 why they didn't.

9 MR. BOYDSTON: Those records would  
10 have been responsive.

11 MR. OLANIRAN: I think I've explained  
12 about as much as I can, and so two things that I  
13 wanted to address. One is the status of Exhibit  
14 341. I would like to move to admit 341, and then  
15 I have a quick housekeeping matter.

16 MR. BOYDSTON: I have no further  
17 questions for the witness. My objection remains,  
18 obviously.

19 JUDGE BARRETT: Thank you. Exhibit  
20 341 is admitted.

21 Whereupon, the above-referred to  
22 document was received into evidence as MPAA

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1 Exhibit 341.)  
 2 JUDGE BARRETT: And housekeeping  
 3 matter, Mr. Olaniran?  
 4 MR. OLANIRAN: The housekeeping matter  
 5 is that Ms. Saunders has an extensive travel  
 6 schedule coming up. I have spoken to Mr.  
 7 Boydston earlier today, and he had agreed that  
 8 Ms. Saunders could come on after we'd completed  
 9 the cross-examination of Mr. Galaz.  
 10 And Ms. Saunders wanted to be able to  
 11 testify first thing in the morning since first  
 12 she has to -- she doesn't live in town, she has  
 13 to travel a couple hours to get to her place of  
 14 residence and then pack, feed the dogs and the  
 15 horses and the chickens or whatever before she  
 16 heads out to Europe.  
 17 And I was really wondering if it's  
 18 possible -- I know that we're in the middle of  
 19 Mr. Galaz's cross-examination -- if I could  
 20 examine, if Ms. Saunders could be examined first  
 21 thing tomorrow morning.  
 22 MR. BOYDSTON: No objection.

1 And, you know, if -- well I don't -- never mind,  
 2 I am going to stop talking while I still can.  
 3 MR. OLANIRAN: Well she'll be here 9  
 4 o'clock tomorrow morning, Your Honor.  
 5 JUDGE BARRETT: Nine o'clock tomorrow  
 6 morning. Thank you all.  
 7 MR. OLANIRAN: Thank you, Your Honor.  
 8 MR. BOYDSTON: Thank you.  
 9 JUDGE BARRETT: And off the record.  
 10 (Whereupon, the hearing went off the  
 11 record at 4:40 p.m.)

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1 MR. MACLEAN: No objection.  
 2 JUDGE BARRETT: Okay. We'll do that,  
 3 starting at 9 o'clock.  
 4 MR. MACLEAN: Your Honor, may I  
 5 instruct my witnesses that they need not come  
 6 until after lunch tomorrow?  
 7 JUDGE BARRETT: I think that's  
 8 acceptable.  
 9 MR. BOYDSTON: Well, Your Honor, I am  
 10 hoping that this won't go on much longer. Could  
 11 you have one of them come before lunch just in  
 12 case?  
 13 JUDGE BARRETT: That's probably the  
 14 better part of valor, Mr. MacLean. Have at least  
 15 one come. Pick one.  
 16 MR. MACLEAN: How about, can I at  
 17 least tell them I or something to that effect?  
 18 MR. BOYDSTON: Why don't we say 10:30?  
 19 (Laughter.)  
 20 MR. OLANIRAN: And may Mr. Saunders be  
 21 excused?  
 22 JUDGE BARRETT: For this evening yes.



## Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the Designated Prior Testimony of Jane V. Saunders, Oral Testimony in Consolidated Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), Transcript pp. 315-47 (December 10, 2014). to the following:

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Signed: /s/ Lucy H Plovnick